

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

NO. 77-6102

No. 77-6102

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WALTER & MARIA GREEN,

Plaintiffs-Appellees,

and

PAT WALKER,

Plaintiff-Intervenor-Appellee,

v.

PAUL R. PHILBROOK, ET AL.,

Defendants-Appellants.

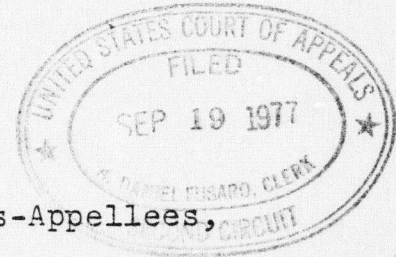
ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF VERMONT

BRIEF FOR THE FEDERAL APPELLANT

BARBARA ALLEN BABCOCK,
Assistant Attorney General,

GEORGE W. F. COOK,
United States Attorney,

LEONARD SCHAITMAN,
MICHAEL F. HERTZ,
Attorneys,
Appellate Section,
Civil Division,
Department of Justice,
Washington, D. C. 20530.



B
P/S

I N D E X

	<u>Page</u>
Question Presented -----	1
Statement of the Case -----	2
1. Nature of the Case -----	2
2. Statutory and Regulatory Scheme -----	2
3. Facts of this Case -----	5
4. District Court Proceedings -----	5
Statutes and Regulations Involved -----	8
Argument:	
THE DISTRICT COURT ERRED IN CONCLUDING THAT REQUIRING SOCIAL SECURITY NUMBERS OF CHILDREN AS A CONDITION OF ELIGIBILITY FOR AFDC BENEFITS WAS IN CONFLICT WITH 42 U.S.C. § 602(a)(25) -----	9
Conclusion -----	27
Certificate of Service -----	28

C I T A T I O N S

Cases:

Cantor v. Supreme Court of Pennsylvania, 353 F. Supp. 1307 (E.D. Pa.) <u>aff'd</u> 487 F.2d 1394 (3d Cir. 1973) -----	28
Chambers v. Klein, 419 F. Supp. 569 (D. N.J. 1976) -----	2,11,16,20,22,28
Conant v. Hill, 326 F. Supp. 25 (E.D. Va. 1971) -----	28
Dandridge v. Williams, 397 U.S. 471 (1970)-	10
Department of Social Services v. Dublino, 413 U.S. 405 (1973) -----	16
Doe v. Sharp, No. 77-1682-F (D. Mass.) ----	2
Eisenstadt v. Baird, 405 U.S. 438 (1972) --	28
Fernandez v. Califano, No. 77-1942 (E.D. Pa.) -----	2

Cases: (continued)

Page

Griswold v. Connecticut, 381 U.S. 479 (1965) -----	28
King v. Smith, 392 U.S. 309 (1968) -----	10
McElrath v. Califano, No. 77-C3194 (N.D. Ill.) -----	2
Millikan v. Califano, No. '4-77-1 159 (D. Minn.) -----	2
Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973) -----	10
Ostric v. Board of Appeal, 280 N.E.2d 692 (Mass. 1972) -----	28
Roe v. Wade, 410 U.S. 113 (1973) -----	28
Shea v. Vialpando, 416 U.S. 251 (1974) ----	10
State of Florida v. Mathews, 526 F.2d 319 (5th Cir. 1976) -----	10,16
Stevens v. Burger, 428 F. Supp. 896 (E.D. N.Y. 1977) -----	22,24
Thorpe v. Housing Authority, 393 U.S. 268 (1969) -----	10
Wyman v. James, 400 U.S. 309 (1971) -----	28
Youakim v. Miller, 425 U.S. 231 (1976) ----	16

Statutes and Regulations:

Federal Privacy Act of 1974, 5 U.S.C. § 552(a) -----	6
---	---

42 U.S.C.:

§ 401 et seq. -----	13
§ 405(c)(2)(B) -----	18
§ 405(c)(2)(B)(i)(II) -----	13,14
§ 405(c)(2)(C) -----	23,26
§ 405(c)(2)(C)(i) -----	23,26
§ 405(c)(2)(C)(ii) -----	24

Statutes and Regulations:(continued)

Page

28 U.S.C.:

§ 1331(a) -----	6
§ 1343 -----	7
§ 2282 -----	27

42 U.S.C.:

§ 601 et seq. -----	2,10
§ 602(a) -----	3
§ 602(a)(15) -----	11
§ 602(a)(16) -----	11
§ 602(a)(19) -----	19
§ 602(a)(19)(F)(ii) -----	12
§ 602(a)(19)(F)(iii) -----	12
§ 602(a)(25) -----	2,4,6,7,8,9,11,12,14, 15,16,22,27
§ 602(a)(25)(B) -----	15
§ 602(a)(26) -----	12,13
§ 602(a)(26)(A) -----	12
§ 602(a)(26)(B) -----	12
§ 602(b) -----	3
§ 602(19)(A) -----	18
§ 605 -----	11
§ 607(b)(2)(A) -----	17
§ 630-44 -----	17
§ 651-60 -----	17
§ 653 -----	12
§ 656(c)(3) -----	12

42 U.S.C. § 1302 -----	10,15
------------------------	-------

45 C.F.R.:

§ 201.2 -----	3
§ 206.10(a)(9)(iii)(A) -----	4
§ 232.10 -----	2,4,7
§ 232.10(f) -----	4,16
§ 233.50 -----	18

Vt. Welfare Assistance Manual § 2303 -----	2,5,7
--	-------

Public Law:

93-647 -----	4,6
93-579 -----	6,22
94-455 -----	23
94-574 -----	6

Miscellaneous:

Page

Conf. Rep. No. 92-1605 at 1972 U.S.C. Cong.
& Admin. News 5370 ----- 15

H. Rept. No. 92-231 at 1972 U.S.C. Cong.
& Admin. News 4989 ----- 15

120 Cong. Rec.:

S 17040 -----	23
S 19845 -----	23
S 19846 -----	23
S 19862 -----	23

122 Cong. Rec.:

S 12816 -----	25,26
S 12817 -----	25
S 12818 -----	24
S 12819 -----	26
S 12820-21 -----	24
S 12822 -----	24

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-6102

WALTER & MARIA GREEN,

Plaintiffs-Appellees,

and

PAT WALKER,

Plaintiff-Intervenor-Appellee,

v.

PAUL R. PHILBROOK, ET AL.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF VERMONT

BRIEF FOR THE FEDERAL APPELLANT

QUESTION PRESENTED

Is the Secretary of Health, Education and Welfare,
in connection with his functions under the Aid to Families
with Dependent Children Program, prohibited from requiring
social security numbers from ANFC-benefitted Vermont
children as a condition of eligibility for benefits.

STATEMENT OF THE CASE

1. Nature of the Case

Plaintiffs are recipients of Vermont's Aid to Needy Families with Children. The present action was brought challenging federal and state requirements that social security numbers for plaintiffs' children be supplied as a condition of eligibility. ^{1/} District Judge Albert W. Coffrin declared both federal and state regulations (45 C.F.R. § 232.10 and Vt. Welfare Assistance Manual § 2303) invalid as being in conflict with 42 U.S.C. § 602(a)(25). App. 46-47. ^{2/} The district court enjoined both federal and state defendants from requiring social security numbers from ANFC-benefitted Vermont children as a condition of eligibility for benefits. App. 47.

2. Statutory and Regulatory Scheme

Pursuant to 42 U.S.C. § 601, et seq. and the Aid to Families with Dependent Children program the Secretary of Health, Education and Welfare is granted authority to approve partial federal funding of state plans for financial assistance

^{1/} The same issue has been raised in a number of other cases: Chambers v. Klein, 419 F. Supp. 569 (D. N.J. 1976) (decided in favor of the government); Millikan v. Califano, No. 4-77-1 159 (D. Minn.) (preliminary injunction entered in favor of plaintiff); Doe v. Sharp, No. 77-1682-F (D. Mass.); Fernandez v. Califano, No. 77-1942 (E.D. Pa.); McElrath v. Califano, No. 77-C3194 (N.D. Ill.).

^{2/} The decision of the district court is reported at 427 F. Supp. 384 (D. Vt. 1977).

to needy dependent children and the parents or relatives with whom they are living.^{3/} Participation in the AFDC program is optional with the states. In order to take part in the program, a state must submit to the Secretary a plan which meets all requirements of the Act set forth in 42 U.S.C. § 602(a) and implementing federal regulations and policies. 42 U.S.C. § 602(b); 45 C.F.R. § 201.2. These requirements include congressional directives as to basic eligibility criteria, including the needs, income and resources of the recipients, and certain administrative measures to assure effective and efficient administration of the programs. If the plan meets all applicable federal requirements the Secretary must approve it, 42 U.S.C. § 602(b), and the state becomes eligible for substantial federal contributions for expenditures made under the plan.

Thus, a state plan under the AFDC program must establish a standard of need for measuring who is eligible for public assistance and what level of benefits will be paid. While the level of benefits need not be the same from state to state, the level will generally be dependent on the number of eligible individuals within the assistance unit.

^{3/} Vermont's ANFC program is a state plan approved pursuant to the provisions of the federal AFDC program.

In 1974, Congress passed Public Law 93-647, which, inter alia, amended the Act by adding Section 402(a)(25), 42 U.S.C. § 602(a)(25), to the state plan requirements for the AFDC program. That section provides:

(A) that as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan. . . .

42 U.S.C. § 602(a)(25).

In connection with his responsibilities under the Act, the Secretary promulgated a regulation which gave effect to 42 U.S.C. § 602(a)(25). Among other things the regulation requires that as a condition of eligibility applicants for or recipients of aid must furnish a social security account number to the appropriate state or local agency and apply for such number if one has not been issued. 42 C.F.R.

§ 232.10. The regulation further defines "applicant" and "recipient" to "include the caretaker relative, the children, and any other individual whose needs are considered in determining the amount of assistance." 45 C.F.R. § 232.10(f).^{4/} The State of Vermont has adopted similar

^{4/} See also 45 C.F.R. § 206.10(a)(9)(iii)(A).

regulations for the implementation of its Aid to Families with Needy Children program.^{5/}

3. Facts of this Case

The facts of this case are not substantially in dispute. In October 1975 plaintiffs, Walter and Maria Green and their three children, received assistance under Vermont's program of Aid to Needy Families with Children. At that time they were notified by agents of the defendant Commissioner of Vermont's Department of Social Welfare that they would be required to supply social security numbers for themselves and their three children as a condition of continued assistance. The adult Greens were willing to furnish their numbers but were unwilling to obtain or furnish social security numbers for their children alleging that to do so would invade the children's right to privacy. App. 7-10, 32-33.

Plaintiff-intervenor Pat Walker was notified by agents of the state-defendant that ANFC benefits for herself and her five children would likewise be terminated in November 1975 unless social security numbers for each family member were supplied. Like the Greens Mrs. Walker was willing to furnish her own social security number, but not those of her children because she felt the decision should be made by the children when they became of age and would otherwise invade their right to privacy. App. 15-18, 33-34.

4. District Court Proceedings.

In October 1975, the Greens filed the present action challenging the Secretary's and state defendant's regulations that made continued receipt of ANFC benefits

5/ Vermont Welfare Assistance Manual, § 2303, provides:

The Department will notify the applicant or recipient that the social security number will be utilized in the administration of the ANFC program. Refusal to furnish the social security numbers for any applicant/recipient shall make the family ineligible for assistance.

contingent on supplying social security numbers for all family members. App. 5-12 . The Greens alleged that the federal and state regulations were inconsistent with and not authorized by 42 U.S.C. § 602(a)(25), and violated plaintiffs' constitutional rights to privacy and equal protection of the laws. An amended complaint alleged that the denial of benefits also violated the Federal Privacy Act of 1974, 5 U.S.C. § 552(a), Pub. L. 93-579, Section 7 (December 31, 1974) inasmuch as Public Law 93-647 did not explicitly authorize the regulations requiring the children to supply social security numbers. App. 29-30 . Plaintiff-intervenor Pat Walker made similar allegations. App. 13-20.

The district court on October 29, 1975 denied plaintiffs' request for a Temporary Restraining Order. Thereafter, the Greens continued to refuse to apply for social security numbers for their children and were accordingly terminated as recipients of ANFC. Mrs. Walker, however, furnished numbers for her children in order to continue assistance payments, but has done so, according to her amended allegations, under protest. App. 23-25.

On February 24, 1977, the district court entered its opinion and order on cross-motions for summary judgment. App. 32-45 . The court first determined that it had jurisdiction over the federal defendants pursuant to the amended provisions of 28 U.S.C. § 1331(a). Pub. L. No. 94-574, Section 2 (Oct. 21, 1976), and over the

state defendants pursuant to 28 U.S.C. § 1343. App. 35 .
Additionally, the court determined to "disregard the class
action allegations" of the complaint inasmuch as the plain-
tiffs did not move for such determination as was required
by local rule.^{6/} App. 36 .

On the merits the district court determined that the
Secretary's regulation and the concomitant state regula-
tion requiring social security numbers for ANFC-benefitted
children were "inconsistent" with the underlying statute.
To reach this conclusion the court construed the phrase
"applicant for or recipients of aid" as used in 42 U.S.C.
§ 602(a)(25) as including only the caretaker relatives and
not the dependent children on whose behalf benefits are
made available. App. 39-41. Although the court referred
to the provisions of section 7 of the Privacy Act, the court
did not find it necessary to rule on plaintiffs' contention
that the challenged regulations specifically violated section
7. App. 42-43. Similarly, because of its disposition, the
court found it unnecessary to reach the alleged constitutional
violation involved in the case. App. 43 .

On April 21, 1977 the district court filed its judgment
order. App. 46-47. Both 45 C.F.R. § 232.10 and Vermont
Welfare Assistance Manual, § 2303, requiring the furnishing

^{6/} The plaintiffs have filed a cross-appeal to challenge
the denial of class certifications. We will respond to
their argument in our cross-appellees' and reply brief.

of social security numbers for ANFC-benefitted Vermont children were declared invalid as inconsistent with 42 U.S.C. § 602(a)(25). Additionally both federal and state defendants were "enjoined from requiring social security numbers from ANFC-benefitted Vermont children as a condition of eligibility for benefits." Finally the Vermont Department of Social Welfare was ordered to pay the Greens an amount equal to the total monthly benefits denied to them because of the termination of benefits pursuant to the invalid regulations, and the social security numbers of plaintiff-Walkers' children were ordered expunged from the records.^{7/}

From this judgment the Secretary has appealed.^{8/}

App. 48 .

STATUTES AND REGULATIONS INVOLVED

Relevant statutes and regulations have been set forth as an Addendum to this brief.

^{7/} The expungement order was to be effective only with respect to the challenged regulations. If a record of the social security numbers existed for any other reason, the court ordered that no deletion or expungement would be required.

^{8/} The state defendants have also filed a notice of appeal. App. 49 . As noted above the plaintiffs have also filed a notice of appeal from the denial of class certification. App. 50 .

ARGUMENT

THE DISTRICT COURT ERRED IN CONCLUDING
THAT REQUIRING SOCIAL SECURITY NUMBERS
OF CHILDREN AS A CONDITION OF ELIGIBILITY
FOR AFDC BENEFITS WAS IN CONFLICT WITH
42 U.S.C. § 602(a)(25)

The district court's decision enjoining the federal and state defendants from requiring social security numbers from ANFC-benefitted Vermont children is inconsistent with the provisions of the AFDC program and is not supported by any statutory provisions. The order is premised on a faulty interpretation of both the literal language and the broad objectives of the Act. Further, it ignores significant matters in connection with the Secretary's and state agencies joint administration of the AFDC program.

1.) The district court determined that children were neither "applicant[s] for or recipient[s] of aid," 42 U.S.C. § 602(a)(25), under the state plan. The court reached the conclusion that any interpretation finding children to be applicants or recipients would be "inconsistent" with the statute. App. 40 . Accordingly, the district court held that the defendants were precluded from requiring the social security numbers of children as a condition of AFDC eligibility. As we now demonstrate the district court's judgment was in error.

Plaintiffs bear a heavy burden in seeking to have the social security number requirement declared invalid. To the extent plaintiffs are attacking an administrative regulation, they must either show that the requirement imposed

is not reasonably related to the purposes of the enabling legislation, Thorpe v. Housing Authority, 393 U.S. 268, 280-81 (1969); Mourning v. Family Publications Service, Inc., 411 U.S. 356, 369 (1973), or they must show that the requirement is "inconsistent" with the statute itself. 42 U.S.C. § 1302; State of Florida v. Mathews, 526 F.2d 319 (5th Cir. 1976). The former is something which the district court acknowledged plaintiff had not done, App. 45 fn. 3, while the latter is something the government submits is not possible to show given the language and underlying principles of the AFDC program.

In the first place it is inconceivable that Congress purposely intended to exclude children from the phrase "applicant for or recipient of aid" as used in the AFDC statute. The program was designed to offer federal monies to the states to support efforts "to furnish financial assistance . . . to needy dependent children and the parents or relatives with whom they are living . . ." 42 U.S.C. § 601 (emphasis added); Shea v. Vialpando, 416 U.S. 251, 253 (1974); King v. Smith, 392 U.S. 309 (1968). As the very name of the program^{9/} and above purpose clearly indicate

^{9/} As the Supreme Court noted in Dandridge v. Williams, 397 U.S. 471 (1970):

The very title of the program . . . show[s] that Congress wished to help children through the family structure. The operation of the statute has this

(footnote continued)

children are at the very heart of the program, and are clearly intended "recipients of aid." Chambers v. Klein,^{10/} 419 F. Supp. 569 (D. N.J. 1976).

That children are at the least "recipients of aid" as that term is used in 42 U.S.C. § 602(a)(25) is made clear from a number of other provisions of the Act. Thus, for example, the Social Security Act requires that as prerequisite to federal approval state plans include a family service type program for "dependent-child[ren] receiving aid under the plan" 42 U.S.C. § 602(a)(15) (emphasis added). Similarly, a state program must provide a plan for dealing with a "home in which a . . . child receiving aid reside[s]" which is "unsuitable . . . because of the neglect, abuse or exploitation of such child." 42 U.S.C. § 602(a)(16) (emphasis added). Finally, state plans must include a work requirement for certain individuals and if such a "child"

9/(continued)

effect. From its inception the Act has defined "dependent children" in part by reference to the relatives with whom the child lives. When a "dependent child" is living with relatives, then "aid" also includes payments and medical care to those relatives, including the spouse of the child's parent.

Id. at 479 (emphasis added).

^{10/} That children are at the very heart of the program is confirmed by 42 U.S.C. § 605. That section gives the state agencies authority to make protective payments or seek the appointment of a guardian when benefits given to an original caretaker relative are not being used in the best interests of the child.

receiving aid" refused work for which he was qualified, aid with respect to that child must be denied. 42 U.S.C. § 602(a)(19)(F)(ii) and (iii) (emphasis added).^{11/} The government submits that, given the normal meaning of words one receiving aid is a "recipient of aid."

The district court relied on other portions of the Act to conclude that children are not applicants for or recipients of aid. A closer examination of these sections indicate, however, that they do not support the district court's conclusion. For example the district court relied on 42 U.S.C. § 602(a)(26) which requires state plans to provide that each "applicant or recipient" be required to assign to the State any rights to support from any other person the applicant might have in his own behalf or on behalf of any other family member for whom the applicant is applying. Id. § 602(a)(26)(A); App.40-41. Additionally, the applicant or recipient is required to cooperate with the state in establishing the paternity of a child born out of wedlock and in obtaining support payments. Id. § 602(a)(26)(B).

It is true, as the district court found, that parts of the foregoing provisions were directed at caretaker

^{11/} 42 U.S.C. § 653 also contemplates that children connected with the AFDC program be considered recipients. Id. § 653(c)(3). This section was enacted as part of Pub. L. 93-647 as was the provision involved in this case, 42 U.S.C. § 602(a)(25).

relatives rather than the children. It is incorrect, however, to then conclude that therefore children cannot be considered applicants or recipients. Certain aspects of an applicants or recipients responsibilities under 42 U.S.C. § 602(a)(26) can be fulfilled by AFDC-supported children. Thus a child might be required to assign any rights to support he might have in his own behalf to the State, as well as to cooperate to the extent possible in establishing paternity and recovering any funds due to them directly. The fact that certain responsibilities of applicants or recipients clearly contemplate action by the caretaker relatives, who are also applicants or recipients, does not make the children any less recipients of funds. Nothing in the language, purpose or meaning of 42 U.S.C. § 602(a)(26) precludes the conclusion that caretaker relatives and children are both subsets of the phrase "applicants or recipients."

The district court also relied on 42 U.S.C. § 405 (c)(2)(B)(i)(II) to support its conclusion that children are not applicants or recipients. App. 41-42. That section provides that in connection with his duties pursuant to the Federal Old Age, Survivors and Disability Insurance Benefits program, 42 U.S.C. § 401 et seq., the Secretary should take affirmative measures to assure to the maximum extent practicable that social security account numbers be assigned "to any individual who is an

applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person" Id. § 405(c)(2)(B)(i)(II) (emphasis added). It is true as the district court noted that Congress specifically referred to children in this section, whereas no special reference is made in 42 U.S.C. § 602(a)(25). This does not, however, mean that children are not part of the phrase "applicants for or recipients of aid" as used in 42 U.S.C. § 602(a)(25). In 42 U.S.C. § 405(c)(2)(B)(i)(II) a special reference to children was needed because the section was part of the Old Age, Survivors, and Disability Insurance program -- a program in which children are not the primary beneficiaries. On the other hand, with respect to 42 U.S.C. § 602(a)(25) it would have been superfluous to add the words children to applicants and recipients, because as previously demonstrated the entire AFDC program is based on the fact that dependent children are the intended beneficiaries.^{12/}

^{12/} Even standing by itself, 42 U.S.C. § 405(c)(2)(B)(i)(II) does not support the district court's conclusion. The clear thrust of the section is to define the Secretary's responsibility to provide social security numbers to any individual who is an applicant for or recipient of a program involving federal benefits, "including any child." From the syntax of the provision children are either intended to be included within the phrase "applicant for or recipient of benefits," or in any even the Secretary to the maximum extent practicable is to take affirmative measures to assign social security

(footnote continued)

In any event neither section relied on by the district court clearly shows that the Secretary's interpretive regulation is "inconsistent" with the AFDC Act; a requirement in order for plaintiffs to prevail. 42 U.S.C. § 1302. Instead the Act, which recognizes dependent children at the center of its purpose, refers to them as recipients in a number of places, and calls for such applicants and recipients to supply their social security numbers. Further, the Secretary's interpretation is consistent with the broad congressional directive which requires the state agencies to "utilize . . . [social security] account numbers, in addition to any other means of identification it may determine to employ in the administration of [the state] plan." 42 U.S.C. § 602(a)(25)(B). Given the

12/(continued) numbers to children on whose behalf federally supported benefits are claimed. The legislative history supports the view that social security numbers were to be employed on a broad basis in connection with federally funded programs:

[Social Security] numbers would be issued to people who do not have them when they apply for benefits under any Federal program.

Conf. Rep. No. 92-1605 at 1972 U.S.C. Cong. & Admin. News 5370, 5374. See also Senate Rept. No. 92-1230 at p. 161;

The social security numbers will be used to identify every recipient. Each family member will be so identified and those not having a social security number will be issued one at the time a benefit claim is filed.

H. Rept. No. 92-231 at 1972 U.S.C., Cong. & Admin. News 4989, 5174-75.

broad authorization to utilize appropriate identification techniques in connection with the AFDC program, there appears to be no justification for the district court's failure to sustain the Secretary's position.

2.) Even if some ambiguity remained as to the precise meaning of the phrase "applicant for or recipient of aid," based on the overall statutory scheme there is substantial support for overturning the district court's decision. Certainly nothing in 42 U.S.C. § 602(a)(25) itself compels the conclusion that children are not required to obtain and disclose their social security numbers. Nor is there anything in the legislative history of which we are aware that would compel that conclusion. In these circumstances and even assuming the existence of an ambiguity "[t]he interpretation of a statute by an agency charged with its enforcement is a substantial factor to be considered in construing the statute." Youakim v. Miller, 425 U.S. 231, 235-36 (1976); Department of Social Services v. Dublino, 413 U.S. 405, 421 (1973); State of Florida v. Mathews, 526 F.2d 319, 323 n.10 (5th Cir. 1976); Chambers v. Klein, 419 F. Supp. 569, 578 (D. N.J. 1976). The Secretary has made clear that his interpretation of the statute includes children within the phrase "applicants for and recipients of aid." 45 C.F.R. § 232.10(f).

The deference accorded the Secretary's interpretation of the Act is not, of course, of unlimited weight. His interpretation must not defeat or otherwise frustrate the purposes of the Act. In the present case, however, the Secretary's interpretation is fully consistent with both the basic policy behind 42 U.S.C. § 602(a)(25), and sound administrative techniques.

Use of social security numbers of individuals connected with AFDC, including children, serves a number of functions in the administration of the program. In the first place, use of the numbers avoids administrative errors which are possible when many recipients have identical names.

Similarly, the numbers are important in determining eligibility. Many private and public institutions such as banks, businesses, hospitals, employers, schools, city and county vital statistice departments and various federal agencies such as the Department of Treasury and Labor ^{13/} base their own record-keeping on social security numbers. State agencies are responsible for checking such sources, and verifying initial and continuing

^{13/} The Department of Labor has concurrent responsibility with HEW for the implementation of the WIN program in connection with AFDC, 42 U.S.C. §§ 630-44, and the unemployed father program (AFDC-UF), 42 U.S.C. § 607(b)(2)(A). The Department of Treasury has partial responsibility for assisting HEW and state agencies in the implementation of Title IV-D of the Act, 42 U.S.C. §§ 651-60 (Child Support Program). Accordingly use of the social security account number by state agencies is important for coordinating the effective and efficient administration of all aspects of the AFDC program by the states.

eligibility. A prohibition against the use of social security numbers by state agencies could cause delay of benefits to needy families because of the increased time necessary to verify eligibility criteria.^{14/}

Having the social security number of children who seek AFDC benefits is also necessary for efficient administration of the program. For example the social security number provides a method for verifying resources that are available to a child. A child's entitlement to certain types of Social Security benefits can be determined only by reference to his social security account number. Similarly, the social security number can be used to verify a child's savings accounts, earnings and other resources. A child's social security number will also be useful in determining whether other AFDC eligibility requirements, applicable to some children, have been met. Thus, verifying whether a child between 16 and 19, who is not working, is in school, as required by the Act, 42 U.S.C. § 602(19)(A), will be easier with the child's social security number because many schools use the number for their records. Similarly, some children in AFDC families who are between

^{14/} Another example of use of social security numbers is made clear by the AFDC requirement that applicants be U.S. citizens or legal aliens. 45 C.F.R. § 233.50. Since social security numbers are issued only on proof of the individual's true identity, age and citizenship or legal alien status, 42 U.S.C. § 405(c)(2)(B), the fact that the applicant has been issued a social security number establishes those conditions.

16 and 19 can be required to register for and be enrolled in a job program under WIN. 42 U.S.C. § 602(a)(19). To eventually meet the job requirement will generally require a social security number, and in any case the number is helpful in connection with the Secretary of Labor's responsibilities under the Act. In sum use of the social security number by state agencies is important for promoting effective and efficient administration of the AFDC program by the states.

Utilization of social security numbers also aids in the deterrence of fraudulent claims for AFDC benefits, and is a valuable tool for welfare fraud detection and prevention. Welfare fraud is a major problem for the states. In Fiscal Year 1976, the states reported the presence of a question of fraud in 3.5 percent of the AFDC case-load. HEW has developed an Interjurisdictional Data Exchange System (IDEX) which is based on social security numbers. IDEX compares welfare case files, both intra and interstate, to locate individuals that appear simultaneously in multiple jurisdictions.^{15/} Also using social security numbers the system can be used to identify individuals who are receiving wages or unemployment benefits and not reporting these amounts to the welfare agency.

^{15/} For example the State of Maryland has reported that use of IDEX between the state and the District of Columbia has resulted in savings of approximately \$5 million for one year.

Use of the social security number makes it less likely that significant resources can be hidden in a child's bank account or that other resources can be hidden by a failure to report them. Additionally, requiring a social security number for each child makes it possible for a state to detect situations where the caretaker creates fictitious children in an attempt to increase the size of the assistance unit, thereby improperly increasing the amount of assistance to the family. Likewise the social security number requirement discourages an applicant from "borrowing" children from a friend or a relative to increase the assistance unit size. Finally, the social security number based IDEX system precludes children from being considered part of families across jurisdictional lines. ^{16/}

^{16/} The district court supported its conclusion that children need not supply social security numbers by focusing on the Child Support program. The court reasoned that the social security number requirement was directed primarily at aiding authorities in identifying and finding missing parents from who support for a child might be due. App. 37,41. As the foregoing makes clear, however, the social security number requirement fulfills many other functions, some of which are directly applicable to children. See Chambers v. Klein, supra at 583. In any event there is no legislative history of which we are aware indicating that Congress intended to limit the use of social security account numbers solely to the Child Support program. In fact the legislative history of the later enacted Tax Reform Act, discussed infra et pp. 23-27 indicates that appropriate use of social security numbers was directed at the concerns mentioned above.

The foregoing demonstrates that for the states to develop an administrative record system for parents based on their social security account numbers and a separate system for their children would be duplicative and wasteful. It would result in a lack of coordination with other programs and other agencies with related goals and functions, uncorrected misreporting of recipients income, and delays in determining eligibility. Given these circumstances the social security number requirement for children is consistent with the goal of sound AFDC administration.

3.) The district court also relied on Section 7 of the Privacy Act of 1974 to bolster its conclusion that utilizing children's social security numbers in connection with the administration of the AFDC program was unauthorized.^{17/} Section 7 makes it unlawful for a government agency to deny an individual any right or benefit solely because the individual refuses to disclose his social security account number. The foregoing does not apply, however, if disclosure of a social security number is required by federal statute, or if such disclosure was

^{17/} The district court did not find as plaintiffs had urged, that the Secretary's regulation specifically violated Section 7 of the Privacy Act, since it was not necessary to the court's decision. App. 43 .

required by statute or regulation adopted prior to January 1, 1975 in connection with maintaining a system of records then in existence. Pub. L. 93-579, section 7 (December 31, 1974).

The provisions of the Privacy Act are not relevant to the proper disposition of this case. In the first place there is a clear exception to Section 7, which comes into play when a statute requires disclosure of a social security account number. If, as we have demonstrated, Congress intended to include AFDC benefitted children within the phrase "applicants for or recipients of aid," as used in 42 U.S.C. § 602(a)(25), then disclosure of social security account numbers is required by statute, and the prohibitions of Section 7 do not apply. See, e.g., Chambers v. Klein, 419 F. Supp. 569, 580 (D. N.J. 1976); Stevens v. Burger, 428 F. Supp. 896, 898 (E.D. N.Y. 1977).

More importantly, however, to the extent that the district court relied on the spirit of Section 7 of the Privacy Act to buttresses its conclusion that AFDC-benefitted children need not supply their social security numbers, App. 42, that reliance was wholly misplaced. Section 7 represented a temporary moratorium on the further expansion of using social security account

numbers.^{18/} Congress, however, clearly reevaluated its position two years later when it passed the Tax Reform Act of 1976. Pub. L. 94-455, Title XII, Section 1211(b), 42 U.S.C. § 405(c)(2)(C).

The Tax Reform Act of 1976 provides among other things that "[i]t is the policy of the United States" that any state or political subdivision be able to utilize in the administration of any general public assistance law social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals "affected by such law." 42 U.S.C. § 405(c)(2)(C)(i). The next section of the Act also declares null and void any provision of federal law previously enacted if it is inconsistent with the policy set forth

^{18/} Such was the title given to the amendment offered in the Senate which eventually became Section 7. See, e.g., 120 Cong. Rec. S 17040 (Sept. 19, 1974); 120 Cong. Rec. S 19845, S 19862 (Nov. 21, 1974). As Senator Percy stated:

The amendment that we offer is a modest proposal to limit the expansion of the use of the social security number.
* * * After careful consideration, we have determined that a moratorium ought to be placed on the ability of both Government and private organizations to develop new programs and new procedures that require an individual to furnish his social security number.

Id. at 19846 (remarks of Senator Percy).

by the preceeding section. Id. § 405(c)(2)(C)(ii).^{19/}
See Stevens v. Burger, 428 F. Supp. 896, 898 (E.D. N.Y.
1977).

The reasons for the enactment of the Tax Reform Act of 1976 as expressed in the legislative history, coincide closely with the purposes served by the requirement that AFDC-benefitted children supply their social security numbers. See notes 13-16 and accompanying text, supra. Thus, as Senator Long indicated during debates on the provisions, appropriate identification is a significant goal:

[W]hen you want a privilege when to
[sic] want to get something out of
Uncle Sam, when you want welfare
payments . . . when you seek these
advantages, you ought to be expected
to identify who you are.

122 Cong. Rec. S 12818 (July 29, 1976) (remarks of Senator Long).

Similarly, the elimination of fraud in connection with assistance payments was of primary concern to the Congress. Thus Senators Nunn and Long in an exchange on the floor of the Senate expressed their concerns that provisions

^{19/} Senators Goldwater and Percy two prime backers of Section 7 of the Privacy Act, clearly recognized that enactment of the social security number provisions of the Tax Reform Act would substantially change the effectiveness of the Privacy Act. See 122 Cong. Rec. S 12820-21 (July 29, 1976) (remarks of Senator Goldwater); Id. at 12822 (remarks of Senator Percy).

like the social security number section of the Tax Reform Act were necessary to reduce the amount of fraud, otherwise welfare programs would lose public support and all poor people would end up in a worse position. Both Senators reminded their colleagues that the taxpayers ultimately paid for the fraud, and that people were more concerned about the fraud than excessive uses of the social security numbers. Id. at S. 12817. As Senator Long opined:

We need to have the benefit of Social Security numbers if we are going to work with the States and cooperate with the States in preventing welfare cheating, welfare chiseling, keeping runaway fathers from forever escaping their duty to help support their children, and in checking on whether people are entitled to benefits that are available under welfare programs.

* * * * *

[I]f we tightened up on the issuing of social security numbers, as we have done, and then we use social security numbers in the administration of welfare programs, that is our best hope to cut down on deception and on fraud.

Id. at 12816, 12817 (remarks of Senator Long).

The legislative history of the Tax Reform Act even refers to some of the specific instances of fraud involving both parents and children previously discussed in connection with the AFDC program. Thus, Senator Long stated:

We come across the situation where people get on the [welfare] rolls numerous times and one person was on the rolls under 18 different names.

* * * * *

[A Social Security number] is the most logical thing to use as it is an easy reference to see if that person is on the rolls under more names than one.

Id. at S. 12816 (remarks of Senator Long).

And Senator Nunn added:

Usually they [children] have to have a welfare worker come by every so often to see if they really exist, to make sure they are not just a number, to look at them every once in a while to make sure they are there.

Id. at S. 12819 (remarks of Senator Nunn).

The foregoing arguments of Senator Long and Nunn apparently carried the day as the amendment adding 42 U.S.C. § 405 (c)(2)(C) was passed and became law.

The Tax Reform Act makes clear that states may use social security numbers in the administration of their general assistance programs for the purposes of identification and reduction of welfare fraud. And in this regard they can require the social security numbers of children since children are clearly "individuals affected" by such assistance laws. 42 U.S.C. § 405(c)(2)(C)(i) (emphasis added). If state agencies can use social security numbers in connection with their general assistance programs, it makes little sense to invalidate federal regulations allowing their use, and to deny the same state agencies use of such numbers for the categorical assistance-AFDC program. The legislative history of the Tax Reform Act

as delineated makes clear that it was directed at concerns which are the same as the reasons outlined supporting the Secretary's judgment that state agencies should use such numbers in connection with the AFDC program. Given the passage of the Tax Reform Act and its relevant legislative history, the district court's reliance on the Privacy Act to bolster its conclusion that the social security number requirement for AFDC-benefitted children is "inconsistent" with congressional action, is difficult to justify.

CONCLUSION

For the foregoing reasons we respectfully request that the judgment of the district court be reversed.^{20/}

Respectfully submitted,

BARBARA ALLEN BABCOCK,
Assistant Attorney General,

GEORGE W. F. COOK,
United States Attorney,

LEONARD SCHAITMAN,
MICHAEL F. HERTZ,
Attorneys,
Appellate Section, Civil Division,
Department of Justice,
Washington, D. C. 20530.

September, 1977

20/ Plaintiffs' original complaint alleged that 42 U.S.C. § 602(a)(25) and the implementing regulations violated plaintiffs' constitutional right to privacy and equal protection of the laws. Because of the disposition of the statutory claims the district court did not convene a three judge court to deal with the constitutional issues as then required by 28 U.S.C. § 2282. Both the privacy and equal protection arguments relied on by plaintiffs are clearly insubstantial, thus no remand to the district court is required.

For example those cases recognizing the constitutional right to privacy almost invariably deal with governmental (footnote continued)

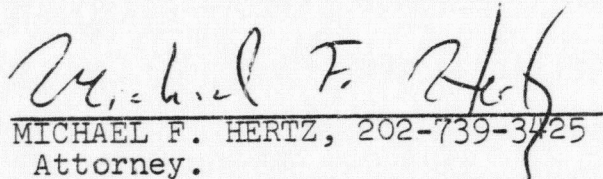
CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 1977, I served the foregoing Brief For The Federal Appellant upon counsel by mailing copies thereof, postage prepaid, to:

Zander B. Rubin, Esquire
Vermont Legal Aid, Inc.
55 Main Street
St. Johnsbury, Vermont 05819

M. Jerome Diamond, Esquire
Attorney General
Department of Social Welfare
Montpelier, Vermont 05602

Attention: Georgiana O. Miranda, Esquire
Assistant Attorney General


MICHAEL F. HERTZ, 202-739-3425
Attorney.

20/(continued) affirmative action to penalize or punish individuals in connection with very personal matters. See, e.g., Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972); Roe v. Wade, 410 U.S. 113 (1973). In the present case we deal with no criminal sanctions, and a condition of eligibility rather than an intrusion into the personal lives of the recipient. See, Wyman v. James, 400 U.S. 309 (1971); Whalen v. Roe, 45 U.S.L.W. 4166, 4170 (U.S. Feb. 22, 1977); Chambers v. Klein, 419 F. Supp. 569 (D. N.J. 1976); Cantor v. Supreme Court of Pennsylvania, 353 F. Supp. 1307, 1321-22 (E.D. Pa.), aff'd 487 F.2d 1394 (3d Cir. 1973); Conant v. Hill, 326 F. Supp. 25, 26 (E.D. Va. 1971); Ostric v. Board of Appeal, 280 N.E.2d 692, 695 (Mass. 1972).

Similarly, plaintiffs' equal protection claim is also insubstantial. Plaintiffs claim it is irrational to distinguish between families who supply their children's social security numbers and those families which do not. The previously outlined administrative needs of governmental authorities, however, clearly affords a rational basis for the distinction in treatment. See also Chambers v. Klein, 419 F. Supp. 569, 583-84 (D. N.J. 1976).

STATUTORY ADDENDUM

Vermont Welfare Assistance Manual, § 2303, provides:

The Department will notify the applicant or recipient that the social security number will be utilized in the administration of the ANFC program. Refusal to furnish the social security numbers for any applicant/recipient shall make the family ineligible for assistance.

42 U.S.C. § 601 provides:

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have

submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

42 U.S.C. § 602 provides in pertinent part:

(a) A State plan for aid and services to needy families with children must . . .

(15) provide as part of the program of the State for the provision of services under subchapter XX of this chapter (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs

are taken into account in making the determination under clause (7), for preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases (including minors who can be considered to be sexually active) family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this clause or clause (14) are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services; (16) provide that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have;

* * * * *

(19) provide -- . . .

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, and employment as provided by regulations of the Secretary of Labor, unless such individual is—

- (i) a child who is under age 16 or attending school full time;
- (ii) a person who is ill, incapacitated, or of advanced age;
- (iii) a person so remote from a work incentive project that his effective participation is precluded;
- (iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;
- (v) a mother or other relative of a child under the age of six who is caring for the child; or

(vi) the mother or other female caretaker of a child, if the father or another adult male relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor under section 633 (g) of this title to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph);

and that any individual referred to in clause (v) shall be advised of her option to register, if she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to her in the event she should decide so to register;

(F) that if and for so long as any child, relative, or individual (certified to the Secretary of Labor pursuant to subparagraph (G)) has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

* * * * *

(ii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iii) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

* * * * *

(25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan; (26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed,

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 406(b)(2) (without regard to subparagraphs (A) through (E) of such section);

42 U.S.C. § 605 provides:

Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 606(b)(2) of this title, or in seeking appointment of a guardian or legal representative as provided in section 1311 of this title, or in the imposition of criminal or civil penalties authorized under State

law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 604 of this title and shall not prevent such payments with respect to such child from being considered aid to families with dependent children.

42 U.S.C. § 1302 provides:

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

Pub. L. 93-579, Section 7 provides:

"(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

"(2) the provisions of paragraph (1) of this subsection shall not apply, with respect to—

"(A) any disclosure which is required by Federal statute, or

"(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1973, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

"(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

42 U.S.C. § 405(c)(2) provides in pertinent part:

(B)(i) In carrying out his duties under subparagraph (A), the Secretary shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

* * * * *

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person; and

* * * * *

42 U.S.C. § 405(c)(2) provides in pertinent part:

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary.

(ii) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i) of this subparagraph, such provision shall, on and after October 4, 1976, be null, void, and of no effect.

(iii) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency operating pursuant to the provisions of part A or D of subchapter IV of this chapter.

45 C.F.R. § 232.10 provides:

The State plan must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

(b) For new applicants, the requirements of paragraph (a) of this section shall be effective August 1, 1975; and, for current recipients, it shall be effective as determined by the State agency but not later than the time of the next redetermination of eligibility required by § 206.10(a)(9) of this chapter.

(c) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account numbers. For purposes of AFDC foster care, the application for the SSN will be made by the State or local agency.

(d) The State or local agency will not deny, delay, or discontinue assistance

pending the issuance or verification of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(e) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(f) "Applicant" and "recipient" include the caretaker relative, the children, and any other individual whose needs are considered in determining the amount of assistance.

(g) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 402(a)(25) of the Social Security Act and that the SSN will be utilized in the administration of the AFDC program.